

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROBBINS INCUBATOR CO.

Claim No. CU -2060

Decision No. CU 2047

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ROBBINS INCUBATOR CO. in the amount of \$1,760.60 and interest, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property

which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in Colorado and that at all times between 1929 and the presentation of this claim more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals.

An officer of claimant has stated that as of August 10, 1967 all the corporate stock was held by six persons, all nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of an installment sales contract, invoices, a letter of instructions to a collecting bank in Cuba, acknowledgements by that bank that drafts in the total amount of \$4,969.87 had been accepted for payment by Granja Los Americanos S. A., a Cuban entity, an accounts receivable ledger and an advice of the collecting bank in Cuba.

On the basis of the evidence of record, the Commission finds that on June 23, 1959, claimant sold goods to Granja Los Americanos S. A. in the amount of \$5,279.97; that Granja Los Americanos S. A. had prior to that date an unpaid balance owing to claimant in the amount of \$2,489.90 for a total debt owing claimant in the amount of \$7,769.87. On August 18, 1959 a payment of \$2,800.00 was made to claimant on this account leaving a balance of \$4,969.87 to be paid in 18 monthly installments of \$246.86 each, commencing July 20, 1959, five monthly installments of \$87.79 commencing

January 20, 1961 and a final payment on June 20, 1961 in the amount of \$87.44. The contract of sale provided that title to the goods remained in the seller until the purchase price had been paid in full.

Claimant states and the record reflects that payments were made and received by it on all but the last 11 installments, represented by 11 drafts totaling \$1,760.69.

Of the amounts claimed, it is established by an advice of the collecting bank, dated October 5, 1960, that drafts due on August 20, 1960 and September 20, 1960 (drafts Nos. 14 & 15), had been paid to a Cuban bank and that application had been made for permission to remit the funds (\$493.72). Claimant states that it has never received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 509(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]).

The record further establishes that Granja Los Americanos, S. A. was nationalized by the Cuban Government in October 1960, pursuant to Resolution No. 3 (pursuant to Law 851) published in the Cuban Official Gazette on October 24, 1960; that no further payments were made by the debtor company after that date; and that therefore claimant suffered a loss on that date of its property in the amount of \$1,266.97.

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention and nationalization by the

Government of Cuba and that, in the absence of evidence to the contrary,
the loss occurred:

<u>On</u>	<u>As to</u>
October 5, 1960	\$ 493.72
October 24, 1960	<u>1,266.97</u>
	1,760.69

Although claim has been asserted for \$711.90 as interest on the debt,
the record does not reflect that interest had accrued or that it had been
added to the debts. However, the Commission has decided that in certification
of losses on claims determined pursuant to Title V of the International Claims
Settlement Act of 1949, as amended, interest should be included at the rate
of 6% per annum from the date of loss to the date of settlement (See Claim
of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sus-
tained by claimant shall be increased by interest thereon at the rate of
6% per annum from the dates on which the loss occurred, to the date on
which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ROBBIN INCUBATOR CO. suffered a loss, as
a result of actions of the Government of Cuba, within the scope of Title V
of the International Claims Settlement Act of 1949, as amended, in the
amount of One Thousand Seven Hundred Sixty Dollars and Sixty-Nine Cents
(\$1,760.69) with interest thereon at 6% per annum from the respective dates
of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

3 JUL 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are
filed within 15 days after service or receipt of notice of this Proposed De-
cision, the decision will be entered as the Final Decision of the Commission
upon the expiration of 30 days after such service or receipt of notice, unless
the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g),
as amended, 32 Fed. Reg. 412-13 (1967).)

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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